HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1995 /2001 (SS)
(Old No. 50022 of 1999)

Babu Ram Saini S/o Sri Phool Singh Saini, Lab Technician
University of Roorkee, District Haridwar ..... Petitioner

Versus

1. State of Uttaranchal
2. Director Indian Institute of Technology, Roorkee, District Haridwar
3. Registrar, Indian Institute of Technology, Roorkee, District Haridwar

..... Respondents

Sri Yogesh Pandey, Advocate for the petitioner
Sri S.Dhulia, Sr. Advocate Assisted by Sobhit Saharia counsel for the respondents.

Dated: 28.8.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Yogesh Pandey counsel for the petitioner and Sri S. Dhulia, Sr. Advocate assisted by Sri Sobhit Saharia counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 22.11.1999 passed by the respondents no. 2.

Briefly stated the petitioner was appointed as Senior Laboratory Assistant in the pay scale of 230-385, on 1.2.1983 in Roorkee University. His pay scale was revised from time to time and now his pay scale is 4500-7000 from 1.1.1996. The petitioner has submitted that he was informed by the authorities that the post of Senior Laboratory Assistant was re-

designated to Laboratory Technician w.e.f. 1.2.1990. A show cause notice was issued to the petitioner on 5.8.1999 that his appointment and pay scale was disputed. The petitioner submitted his reply on 28.9.1999. Against the show cause notice the petitioner filed a writ petition before Allahabad High Court being writ petition No. 35275 of 1999 (Babu Ram Saini vs. State of U.P. & others) which was dismissed vide order dated 19.8.1999.

The respondents passed order dated 22.11.1999 and awarded punishment to the petitioner for recovery of Rs. 1,27,430.15 paisa. The contention of the petitioner is that after a lapse of 17 years vide order dated 22.11.1999 the respondents have fixed the pay scale of the petitioner with retrospective effect and reduced the salary of the petitioner, which is not permissible under the service law. No recovery order of the alleged excess payment of salary can be passed against the petitioner.

Counter affidavit has been filed on behalf of the respondents. The respondents have submitted that the petitioner was appointed as Junior Laboratory Assistant in the pay scale 200-320 but by mistake an incorrect appointment letter was issued to him showing his pay scale as 230-385. When the senior Laboratory Assistants were designated as Laboratory Technicians in the University in pursuance of the decision of the State Govt. Sri Babu Ram was also re-designated as Laboratory Technician. He was never promoted as Senior Laboratory Assistant; and thereafter all his subsequent promotions were wrongly made. After inquiry in the matter it was found that a sum of Rs. 1,15,652.15 had been paid to the petitioner, therefore, a show cause notice was issued to him.

Counsel for the petitioner has relied upon the judgment of this Court in the case Sri Nau Singh vs. State of Uttaranchal, 2004 (1) U.D. 649 where this Court in a similar case after placing reliance on the case P.H. Raddy and others vs. NTYRD and others 2002 SC-SCR 359, Sahib Ram vs. State of Haryana and other JT 1995 (1) SC, 24: 1995 Spp (1) SCC 18 and Bindeshwari Sahai Srivastava vs. the Chief Engineer, Irrigation and others 1996 (4) UPLBEC, 2634, has held that any employee who have obtained the higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn.

This Court in the case Nau Singh (supra) has held as under:

"Admittedly, the petitioner along with other employees were given the promotional pay scale from 27.03.1999 vide order dated 7th August 2001 and as such, the recovery against the petitioner is wholly unfounded."

The facts of the present case are squarely covered by the facts and law cited the case Sri Nau Singh vs. State of Uttaranchal (supra), and thus the writ petition deserves to be allowed. The petitioner has submitted in the supplementary affidavit that in the absence of any interim order in favour of the petitioner, the respondents recovered the disputed amount from the petitioner at the rate of Rs. 1200/- per month from his salary and now he has been retired on 31.12.2004.

In view of above, a writ of certiorari is issued quashing the impugned order dated 22.11.1999 passed by the respondent no. 2. The respondents are directed to refund the amount already

recovered from the petitioner within a month after obtaining certified copy of this order.

No order as to costs.

Dated: 28.8.2006 **Rajesh Tandon, J.**
*Dhyani